

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 FAX (757) 518-2009
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RUDY'S TRUCK & AUTO PARTS, LLC
FOR
RUDY'S TRUCK & AUTO PARTS
VPDES Permit No. VAR05
Storm Water Registration No. VAR052147**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Rudy's Truck & Auto Parts, LLC, regarding the Rudy's Truck & Auto Parts Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "2014 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and which expired on June 30, 2019. Rudy's applied for registration under the Permit and was issued Registration No. VAR052147 on July 1, 2014.

3. "2019 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. Rudy's applied for registration under the Permit and was issued/continued Registration No. VAR052147 on July 1, 2019.
4. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. "CSCE" means comprehensive site compliance evaluation.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means the discharge of a pollutant.
9. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
10. "DMR" means Discharge Monitoring Report.
11. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
12. "Facility" means the Rudy's Truck & Auto Parts automobile salvage yard located at 5117 Bainbridge Boulevard in Chesapeake, Virginia.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9
VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Registration statement" means a registration statement for coverage under a storm water general permit.
18. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
19. "Rudy's" means Rudy's Truck & Auto Parts, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Rudy's is a "person" within the meaning of Va. Code § 62.1-44.3.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
22. "SWPPP" means Stormwater Pollution Prevention Plan.
23. "TMDL" means Total Maximum Daily Load.
24. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
25. "Va. Code" means the Code of Virginia (1950), as amended.
26. "VAC" means the Virginia Administrative Code.
27. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Rudy's owns and operates the automobile salvage yard located at 5117 Bainbridge Boulevard in Chesapeake, Virginia.
2. The permit allows Rudy's to discharge stormwater associated with industrial activity from the Facility to Mains Creek, in strict compliance with the terms and conditions of the 2014 Permit and subsequently the 2019 Permit.
3. Mains Creek is located in the James River Basin. Mains Creek is a tributary to the Southern Branch of the Elizabeth River. The Southern Branch of the Elizabeth River is listed in DEQ's 305(b) report as impaired for fish consumption use. The cause of impairment is dioxin.
4. During a DEQ Facility inspection on March 29, 2018, and in subsequent file reviews, DEQ staff made the following observations:
 - a. During a DEQ inspection of the Facility on March 29, 2018, Rudy's did not have quarterly visual monitoring records from 2017 available for review at the Facility. Although Rudy's provided the 2017 quarterly visual monitoring reports to DEQ on June 11, 2018, the reports failed to list the personnel performing the examination, and samples were not collected within the first 30 minutes of discharge.
 - b. During the DEQ inspection of the Facility on March 29, 2018, Rudy's did not have a SWPPP available for review at the Facility. Although Rudy's submitted the SWPPP to DEQ on June 11, 2018, that SWPPP was not certified and did not include sections required by Part III of the 2014 Permit, including a stormwater controls section; an "eliminating and minimizing exposures" section; a schedule for regular pickup and disposal of waste materials, along with the mention of leaks and conditions of drums, tanks, and containers; spill response procedures; and contact information for spill notifications. The site map included in the SWPPP was missing the boundaries of the property, the size of the property in acres, the locations of all ditches, pipes, and swales, the location of waterbodies and wetlands, and the sector-specific regulations for vehicle storage areas and parts storage areas.
 - c. During the March 29, 2018, inspection, Rudy's did not have records of routine facility inspections available for review at the Facility. Although Rudy's submitted routine facility inspection records to DEQ on June 11, 2018, the records failed to include the inspection time. Additionally, the SWPPP submitted on June 11, 2018 provided only for "visual inspection of all storm system inlets," rather than "visual inspection of all areas of the facility where industrial material or

activities are exposed to stormwater," and failed to provide that at least one routine inspection each year must be performed during a measurable storm event.

- d. During the March 29, 2018, inspection, Rudy's did not have a CSCE for 2017 available for review at the Facility. Although Rudy's submitted the 2017 CSCE to DEQ on June 11, 2018, the CSCE was not certified.
- e. Rudy's failed to submit the following benchmark monitoring DMRs and TMDL DMRs:

Monitoring Type	Due Date	Outfalls	Reporting Frequency
Benchmark	1/10/2015	001, 002, 003	Semi-Annual
TMDL	1/10/2015	001, 002, 003	Semi-Annual
Benchmark	7/10/2015	001, 002, 003	Semi-Annual
TMDL	7/10/2015	001, 002, 003	Semi-Annual
Benchmark	1/10/2016	001, 002, 003	Semi-Annual
TMDL	1/10/2016	001, 002, 003	Semi-Annual
Benchmark	7/10/2016	001, 002, 003	Semi-Annual
TMDL	7/10/2016	001, 002, 003	Semi-Annual
Benchmark	1/10/2017	001, 002, 003	Semi-Annual
Benchmark	7/10/2017	001, 002, 003	Semi-Annual
Benchmark	1/10/2018	001, 002, 003	Semi-Annual
Benchmark	7/10/2018	001, 002, 003	Semi-Annual
Benchmark	1/10/2019	001, 002, 003	Semi-Annual
Benchmark	7/10/2019	001, 002, 003	Semi-Annual
Benchmark	1/10/2020	001, 002	Semi-Annual
TMDL	1/10/2020	001, 002	Semi-Annual

5. 2014 Permit Part I(A)(1)(a)(1) required the permittee to perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall.
6. 2014 Permit Part I(A)(1)(a)(3) required the visual examination reports to be maintained on-site with the SWPPP and to include specified elements, including examination personnel.
7. 2014 Permit Part I(A)(1)(a)(2) requires samples to be collected in accordance with Part I(A)(2). 2014 Permit Part I(A)(2)(b) required the grab sample to be taken during the first 30 minutes of the discharge.
8. 2014 Permit Part III required the permittee to develop and implement a SWPPP and specifies the information that must be included in the SWPPP.

9. 2014 Permit Part II(B)(2) required the permittee to retain copies of the SWPPP for a period of at least three years from the date that coverage under this Permit expires or is terminated.
10. 2014 Permit Part III(F)(2) required the permittee to retain a copy of the current SWPPP required by the Permit at the facility, and it shall be immediately available to the Department at the time of an onsite inspection or upon request.
11. 2014 Permit Part III(B)(5) required the permittee to inspect all areas of the facility where industrial materials or activities are exposed to stormwater. These inspections must be at a minimum quarterly during periods when the Facility is in operation. At least once each calendar year, the routine Facility inspection must be conducted during a period when a stormwater discharge is occurring. The results of the inspections must be documented in the SWPPP, including the inspection date and time and other components specified in 2014 Permit Part III(B)(5)(a)-(h).
12. 2014 Permit Part III(B) requires the contents of the SWPPP to comply with the requirements specified in that section, including 2014 Permit Part III(B)(5).
13. 2014 Permit Part III(E) required the permittee to conduct comprehensive site compliance evaluations at least once every calendar year.
14. 2014 Permit Part III(E)(3) required the permittee to write a compliance evaluation report summarizing the scope of the evaluation and observations. The report must be signed in accordance with Part II(K) and maintained with the SWPPP.
15. 2014 Permit Part II(K)(4) required certification of all reports required by permits.
16. 2014 and 2019 Permit Part I(A)(I)(b) requires benchmark monitoring of stormwater discharges from the Facility's stormwater outfalls for the presence of pollutants of concern.
17. 2014 Permit Part I(B)(7)(b)(I) required owners of facilities in the Chesapeake Bay watershed to monitor their discharges for total suspended solids, total nitrogen, and total phosphorus to characterize the contributions from the facility during the first four monitoring periods of the 2014 Permit (i.e., the first two years of permit coverage).
18. 2019 Permit Parts I(B)(8)(a) and I(B)(8)(b)(3) require facilities that did not complete Chesapeake Bay TMDL monitoring for four monitoring periods under the 2014 Permit to monitor their discharges for total suspended solids, total nitrogen, and total phosphorus to characterize the contributions from the facility during the first four monitoring periods of the 2019 Permit.
19. 2014 and 2019 Permit Part I(A)(2)(d)(2) requires discharge monitoring to be conducted semiannually for the January through June monitoring period and the July through December monitoring period.

20. DEQ issued NOV No. W2018-05-T-0003 to Rudy's, dated May 23, 2018, for the violations noted above.
21. On June 6, 2018, Rudy's responded to the NOV by telephone. Rudy's followed up by email in response to the NOV on June 6 and 8, 2018. On June 11, 2018, DEQ received a copy of the SWPPP, 2017 CSCE, and 2017 records of quarterly visual monitoring and routine facility inspections. Upon review of the June 11, 2018 submittals, DEQ observed compliance deficiencies with the SWPPP, CSCE, and monitoring and inspection reports.
22. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
23. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
24. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
25. The Department has issued coverage under no permits or certificates to Rudy's other than under VPDES Permit No. VAR05 (Reg. No. VAR052147).
26. Mains Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
27. Based on the results of the March 29, 2018 inspection, the Board concludes that Rudy's has violated conditions Part III, III.F.2, I.A.1.a, Part III.B.5, III.E, I.A.1.b, and II.C of the Permit as noted in paragraphs C(4) through C(11) of this Order.
28. Rudy's was subject to coverage under VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and expired on June 30, 2019. Rudy's became subject to coverage under the VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019, and which expires on June 30, 2024.
29. In order for Rudy's to return to compliance, DEQ staff and representatives of Rudy's have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Rudy's, and Rudy's agrees to:

Pay a civil charge of \$8,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 day of execution of Order	\$4,000 or balance
August 1, 2020	\$2,000 or balance
November 1, 2020	\$2,000 or balance

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Rudy's shall include its Federal Employer Identification Number (FEIN) _____ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Rudy's shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Rudy's for good cause shown by Rudy's, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV No. W2018-05-T-0003 dated May 23, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Rudy's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Rudy's consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Rudy's declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Rudy's to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Rudy's shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Rudy's shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rudy's shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Rudy's. Nevertheless, Rudy's agrees to be bound by any compliance date, which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Rudy's has completed all of the requirements of the Order;
- b. Rudy's petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Rudy's.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rudy's from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Rudy's and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Rudy's certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Rudy's to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Rudy's.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Rudy's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16 day of JUNE, 2020.



Craig R. Nicol, Regional Director
Department of Environmental Quality

Rudy's Truck & Auto Parts, LLC voluntarily agrees to the issuance of this Order.

Date: 4-15-2020 By: [Signature], acting member
(Person) (Title)
Rudy's Truck & Auto Parts, LLC

Commonwealth of Virginia
City/County of Chesapeake

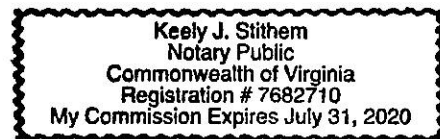
The foregoing document was signed and acknowledged before me this 15th day of
April, 2020, by Kimberly Feuerschutz who is
Managing Member of Rudy's Truck & Auto Parts, LLC, on behalf of the
company.

[Signature]
Notary Public

7682710
Registration No.

My commission expires: July 31, 2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Rudy's shall:

1. Within 60 days of the effective date of this Order, submit to DEQ for review and approval, an updated SWPPP that complies with all requirements set forth in 2019 Permit Part III, including, but not limited to:
 - a. Certification, as required by 2019 Permit Part II(K) and Part III(E);
 - b. Stormwater controls section, as required by 2019 Permit Part III(B)(4);
 - c. Eliminating and minimizing exposures section, as required by 2019 Permit Part III(B)(4)(b)(2);
 - d. Schedule for regular pickup and disposal of waste materials along with the mention of leaks and conditions of drums, tanks, and containers, as required by 2019 Permit Part III(B)(4)(b)(1);
 - e. Spill response procedures, as required by 2019 Permit Part III(B)(4)(b)(4)(b);
 - f. Contact information for spill notifications, as required by 2019 Permit Part III(B)(4)(b)(4)(d);
 - g. Change "visual inspection of all storm system inlets" to "visual inspection of all areas of the facility where industrial material or activities are exposed to stormwater";
 - h. Provide that at least one routine inspection each calendar year must be performed during a measurable storm event, as required by 2019 Permit Part III(B)(5).
 - i. An updated site map that complies with all requirements set forth in 2019 Permit Part III(B)(2)(b), including, but not limited to:
 - i. Boundaries of the property;
 - ii. Size of the property in acres;
 - iii. Locations of all ditches, pipes, and swales;
 - iv. Location of waterbodies and wetlands; and
 - v. Sector-specific regulations for vehicle storage areas and parts storage areas.
2. Within 30 days of the effective date of this Order, submit to DEQ an updated quarterly visual monitoring report form that complies with all requirements set forth in 2019 Permit Part I(A)(1)(a)(3), including, but not limited, to personnel who performed the examination.
3. In conducting quarterly visual monitoring, collect samples within the first 30 minutes of discharge or provide an explanation as to why this was not practical, in accordance with 2019 Permit Part I(A)(2)(b).
4. By October 10, 2020, January 10, 2021, April 10, 2021, and July 10, 2021, submit reports of quarterly visual monitoring and records of routine Facility inspections conducted during the preceding three-month period.
5. By January 10, 2021, submit the benchmark monitoring and Chesapeake Bay TMDL DMRs for the July-December 2020 monitoring period.
6. By July 10, 2021, submit the benchmark monitoring and Chesapeake Bay TMDL DMRs for the January-June 2021 monitoring period.

7. Unless otherwise specified in this Order, Rudy's shall submit all requirements of Appendix A of this Order to:

Enforcement
DEQ – Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462